IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 114 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

MEHMOODMIYA A TOPIWALA

Appearance:

1. INCOME TAX REFERENCE No. 114 of 1989
MR BB NAYAK FOR MR MANISH R BHATT for Applicant.
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following two questions for the opinion of this Court under section 256(1) of the Income Tax Act,1961 (hereinafter referred to as 'the Act').

1 "Whether the Tribunal has not erred in law and on facts in confirming the view taken by the AAC in holding that sec.64 of the I.T.Act,1961 was not applicable in respect of the interest payment of Rs.9,169/- for A.Y.1982-83 made by the assessee to his wife ?

2 Whether the Tribunal has not erred in law and on facts in not accepting the view taken by the ITO that this was a case of cross transfer, in as much as, the assessee's wife and hence provisions of sec.64 of the I.T.Act,1961 were rightly invoked ?"

2 Heard Mr.B.B.Nayak, learned Counsel for the applicant-revenue. Though served none appears for the respondent-assessee.

3 The Tribunal followed its earlier decision in assessee's own case. At the time of hearing it was pointed out by learned Counsel that the questions referred to us stand concluded in favour of the revenue by the decision in C.I.T. vs. A.Topiwala (1994) 207 I.T.R. 711. Following the aforesaid decision in assessee's own case, we hold that the Tribunal was not justified in holding that provisions of section 64 of the Act were not applicable in relation to interest payment of Rs.9169/- for assessment year 1982-83 and Rs.9,356/for assessment year 1983-84. Both the questions referred to us are therefore answered in the negative i.e. in favour of the revenue and against the assessee.

4 The reference stands stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta, J)

m.m.bhatt